IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10546 of 2000

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 2 - Petitioner(s)
Versus
JOGENDRA BACHUBHAI - Respondent(s)

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Appearance :
MS MEGHA JANI for Petitioner(s) : 1 - 3.
MR PH PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 05/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Petitioners – Union of India and others have challenged, in this petition, the impugned Judgment and order dated 23.6.2000 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short “Tribunal) in OA NO. 47 of 1993, whereby the learned Tribunal set aside the impugned order of removal from service of the original applicant – present respondent and ordered to reinstate him in service with all consequential benefits, including back-wages.

For remaining absent from duty from 26.10.1987 to 16.11.1987 and from 11.2.1988 to 15.3.1988 the applicant – respondent was served with the charge-sheet dated 28.7.1988 (Annexure : A). In his reply he denied the charges levelled against him, therefore, regular Inquiry was held and the Inquiry Officer found the charge of remaining absent from duty for the aforesaid period to be proved. Agreeing with the findings recorded by the Inquiry Officer the Disciplinary Authority passed an order of removal from service of the original applicant with immediate effect, against which he preferred an Appeal before the Appellate Authority. The same was also dismissed. Hence, the applicant – respondent filed OA No 47 of 1993 before the learned Tribunal. There was some delay in filing the above Application, therefore, Miscellaneous Application No.13 of 1993 was filed in it which was allowed and the original application was heard on merit and decided in favour of the applicant on 26.3.2000.

The learned Tribunal quashed and set aside the

order of removal passed by the Disciplinary Authority on the ground that the Disciplinary Authority was influenced by the fact that the applicant had been on leave without pay for 127-1/2 days in the year 1988 and for 78 days LWP during January, 1989 to May 1989. It was not the part of the charge which was levelled against the applicant. The applicant had no opportunity to meet with the same. Therefore, in our considered opinion, the learned Tribunal was fully justified in setting aside the impugned order of removal.

Under the circumstances, there is no need for us to go through other reasoning assigned by the learned Tribunal for quashing and setting aside the impugned order of removal passed by the Disciplinary Authority, which was confirmed in Appeal by the Appellate Authority.

However, the question remains whether the applicant should have been reinstated in service with all consequently benefits, including the back-wages ? Admittedly, the petitioner remained absent from duty. For similar type of misconduct in the past he was awarded minor punishment. Under the circumstances, the learned Tribunal ought to have sent the matter back to the Disciplinary Authority for passing appropriate order of penalty. We would have also done the same thing, but in the instant case the impugned order passed by the learned Tribunal in 2000 was stayed by the Division Bench of this Court on 6.12.2000 while admitting the petition. Thus, the petitioner could not have been reinstated in service

and was not given any benefit of the order passed by the learned Tribunal. The petitioner was out of job since 1989, therefore, not to award back-wages itself would be a sufficient punishment. In fact, Shri Pathak for the respondent – applicant conceded that he should not be awarded any back-wages during this period. Under the circumstances, while not interfering with the order of reinstatement with consequential benefit awarded by the learned Tribunal it is made clear that the applicant will not be entitled for any back-wages during the period which he remained out of job.

It is hope and trust that now the petitioner shall reinstate the respondent – applicant and grant all other consequential benefit as ordered by the learned Tribunal, except the back-wages during the interregnum period, as early as possible and not later than 30.4.2007.

Petition is partly allowed. Rule made absolute to the aforesaid extent only. No order as to costs.

(B.J.SHETHNA,J.)

(H.B.ANTANI, J.)

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